

Office of Chief Counsel
Internal Revenue Service
memorandum

CC:LM:FSH:MAN:2:TL-N-7257-00
JSRubinstein

date:

to: Richard Fleming, Territory Manager, Communications
Attention: Moyee Mak, Revenue Agent, LMSB

from: Area Counsel (Financial Services and Healthcare) (Area 1)

subject:

Tax Years: [REDACTED], [REDACTED] and Tax Year Ended [REDACTED]
Form 872 - Consent to Extend the Statute of Limitations
Statute of Limitations Expires: [REDACTED]

UIL Nos. 6501.08.00, 6501.08-17

DISCLOSURE STATEMENT

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This advice is not binding on Examination or Appeals and is not a final case determination. Such advice is advisory and does not resolve Service position on an issue or provide the basis for closing a case. The determination of the Service in the case is to be made through the exercise of the independent judgment of the office with jurisdiction over the case.

This memorandum responds to your request for written advice concerning the appropriate language to be used on a Form 872, Consent to Extend the Statute of Limitations on Assessment.

Issue

What specific language should be used in the caption of a Form 872, Consent to Extend the Statute of Limitations on Assessment, for [REDACTED] [REDACTED]?

Facts

This opinion is based on the facts set forth herein. It might change if the facts are determined to be incorrect. If the facts are determined to be incorrect, this opinion should not be relied upon. You should be aware that, under routing procedures which have been established for opinions of this type, we have referred this memorandum to the Office of Chief Counsel for review. That review might result in modifications to the conclusions herein. We will inform you of the result of the review as soon as we hear from that office, which should be in approximately 10 days. In the meantime, the conclusions reached in this opinion should be considered to be only preliminary.

[REDACTED] has an [REDACTED] products, which it distributes [REDACTED]. [REDACTED] also licenses and otherwise [REDACTED] rights of its products, such as [REDACTED] and [REDACTED].

Approximately [REDACTED]% of [REDACTED] was owned by [REDACTED] until [REDACTED], when [REDACTED] sold the stock it owned to [REDACTED]. [REDACTED] acquired additional shares of [REDACTED] during [REDACTED] and [REDACTED]. Effective [REDACTED], [REDACTED] merged with and into [REDACTED], with [REDACTED] being the surviving corporation. After the merger [REDACTED] owned [REDACTED]% of [REDACTED]. In [REDACTED], [REDACTED] increased its ownership of [REDACTED] to [REDACTED]%, thereby permitting tax consolidation. On [REDACTED], [REDACTED], through its wholly owned subsidiary [REDACTED], entered into an Agreement and Plan of Merger ("Plan") with [REDACTED] to acquire the remaining [REDACTED]% interest in [REDACTED] via a cash offer. Pursuant to the Plan, following the consummation of the offer, [REDACTED] would be merged with and into [REDACTED] with [REDACTED] being the surviving corporation in accordance with the General Corporation Law of the State of Delaware. Plan, Article II, Section 2.01. There was no reorganization of [REDACTED] and it remains a viable corporation having the same employee identification number.

[REDACTED] filed its U.S. Corporation Income Tax Returns, Form 1120, on a consolidated basis with its subsidiaries until [REDACTED]

when [REDACTED] filed a short year return for the period from [REDACTED] to [REDACTED]. [REDACTED] was included in [REDACTED]'s consolidated U.S. Corporation Income Tax Returns, Form 1120, for the period from [REDACTED] to [REDACTED]. [REDACTED] continues to be included in [REDACTED]'s consolidated U.S. Income Tax Return, Form 1120. The Consolidated U.S. Corporation Income Tax Returns, Form 1120, for [REDACTED] are currently being examined for the [REDACTED] and [REDACTED] tax years and for the short tax year ended [REDACTED].¹

[REDACTED] executed a Consent to Extend the Time to Assess Tax, Form 872, to [REDACTED] for the [REDACTED] and [REDACTED] tax years on [REDACTED] and [REDACTED] respectively. You have requested advice regarding the appropriate language for a Form 872, Consent to Extend the Time to Assess tax in connection with the [REDACTED] and [REDACTED] tax years and the short year ended [REDACTED], consolidated U.S. Income Tax Returns for [REDACTED].

Discussion

As a preliminary matter, we recommend that you pay strict attention to the rules set forth in the Internal Revenue Manual ("IRM"). Specifically, IRM 4541.1(2) requires use of Letter 907(DO) to solicit the extension, and IRM 4541.1(8) requires use of Letter 929(DO) to return the signed extension to the taxpayer. Dated copies of both letters should be retained in the case file as directed. When the signed extension is received from the taxpayer, the responsible manager should promptly sign and date it in accordance with Treas. Reg. § 301.6501(c)-1(d) and IRM 4541.5(2). The manager must also update the statute of limitations in the continuous case management statute control file and properly annotate Form 895 or equivalent. See IRM 4531.2 and 4534. This includes Form 5348. In the event an extension becomes separated from the file or lost, these other documents would become invaluable to establish the agreement.

Furthermore, Section 3461 of the Restructuring and Reform Act of 1998, codified in I.R.C. § 6501(c)(4)(B), requires the Service to advise taxpayers of their right to refuse to extend the statute of limitations on assessment, or in the alternative to limit an extension to particular issues or for specific periods of time, each time that the Service requests that the taxpayer extend the limitations period. To satisfy this requirement, you may provide Publication 1035, "Extending the Tax

[REDACTED]'s consolidated U.S. Corporation Income Tax Return, Form 1120, for the [REDACTED] through [REDACTED] tax years are also currently under examination.

Assessment Period," to the taxpayer when you solicit the Form 872. Alternatively, you may advise the taxpayer orally or in some other written form of the I.R.C. § 6501(c)(4)(B) requirement.

Regardless of which method you use to notify the taxpayer, you should document your actions in this regard in the case file. Although section 6501(c)(4)(B) does not provide a sanction or penalty on the Service for failure to comply with the notification requirement, a court might conclude that an extension of the statute of limitations is invalid if the Service did not properly notify the taxpayer. Thus, it is important to document your actions in this regard in the case file.

In general, the statute of limitations on assessment expires three years from the date the tax return for such tax is filed. I.R.C. § 6501(a). Section 6501(c)(4), however, provides an exception to the general three year statute of limitations on assessment. In accordance with this exception, the Secretary and the taxpayer may consent in writing to an agreement to extend the statute of limitations on assessment. For income taxes, the form used by the Service to extend the limitations period on assessment is Form 872 (Consent to Extend the Time to Assess Tax).

The common parent of a consolidated group is the proper party to extend the statute of limitations for income tax for any tax year for which it was the common parent so long as it remains in existence. The common parent remains in existence despite a "mere change in identity, form, or place of business." Treas. Reg. § 1.1502-75(d)(2).

In the instant case, the Plan provides that [REDACTED] survived the merger and remained in existence. Since [REDACTED] has not been the subject of a merger or corporate name change the caption for the Consent to Extend the Time to Assess Tax, Form 872, does not require special language and should simply read as follows:

" [REDACTED]
(E.I.N. [REDACTED]) "

The Form 872, should be executed by the president, vice-president, treasurer, assistant treasurer, chief accounting officer or any other officer duly authorized to act on behalf of [REDACTED]. See Rev. Rul. 83-41, 1983-1 C.B. 399, clarified and amplified, Rev. Rul. 84-165, 1984-2 C.B. 305.

Should you have any questions regarding this matter, please feel free to call me at (212) 264-1595, extension 235.

ROLAND BARRAL
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By: _____
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